

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

JILL CLARK, on behalf of herself and  
others similarly situated,

Plaintiff,

v.

SAMSUNG ELECTRONICS  
AMERICA, INC.,

Defendant.

---

Civil Action No. 2:20-cv-12969  
(WJM) (MF)

**MOTION RETURN DATE: JANUARY  
4, 2021**

**ORAL ARGUMENT REQUESTED**

---

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION  
TO DISMISS**

---

**GREENBERG TRAURIG, LLP**

Richard Edlin, Esq.

David Jay, Esq.

Robert Herrington, Esq. (admitted *pro hac vice*)

500 Campus Drive, Suite 400

Florham Park, NJ 07932

(973) 360-7900

*Attorneys for Defendant*

*Samsung Electronics America, Inc.*

**TABLE OF CONTENTS**

I. PRELIMINARY STATEMENT ..... 1

II. RELEVANT BACKGROUND ..... 3

    A. Procedural History ..... 3

    B. Plaintiff’s Allegations ..... 4

III. ARGUMENT ..... 6

    A. Standard of Review ..... 6

    B. The Court Lacks Federal Jurisdiction Over Plaintiff’s Complaint. .... 8

        1. Plaintiff has not alleged a factual basis for and cannot prove that the elements of CAFA jurisdiction are satisfied. .... 9

        2. Plaintiff cannot meet the MMWA’s amount-in-controversy requirement. .... 13

    C. Plaintiff’s Complaint Fails To State A Plausible Claim For Relief. .... 16

        1. The MMWA claim fails because Plaintiff has not identified any written affirmation that qualifies as a warranty under the statute. .... 16

        2. Plaintiff fails to state a common law or NJCFA fraud claim because she does not meet the heightened pleading standard under Rule 9(b). .... 21

            a. Plaintiff fails to state a claim for fraud or violation of the NJCFA based on an affirmative misrepresentation. .... 23

            b. Plaintiff fails to plead a claim for fraud based on omission because she does not allege facts that give rise to any duty to disclose. .... 26

        3. Plaintiff’s unjust enrichment claim should be dismissed because there is no direct relationship between Plaintiff, an indirect

purchaser, and Samsung, and she cannot allege that she  
expected remuneration from Samsung. ....28

IV. CONCLUSION.....31

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Argabright v. Rheem Mfg. Co.</i> , 201 F. Supp. 3d 578 (D.N.J. Aug. 15, 2016).....	26, 27
<i>Bedi v. BMW of N. Am., LLC</i> , 2016 U.S. Dist. LEXIS 9365 (D.N.J. Jan. 27, 2016) .....	30
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	7
<i>Boring v. Google Inc.</i> , 362 Fed. Appx. 273 (3d Cir. 2010) .....	7
<i>Christidis v. First Penn. Mortg. Trust</i> , 717 F.2d 96 (3d Cir. 1983) .....	21
<i>Cole v. Jaguar Land Rover N. Am. LLC</i> , 2011 U.S. Dist. LEXIS 153800 (D.N.J. 2011).....	15
<i>Donachy v. Intrawest U.S. Holdings, Inc.</i> , 2012 U.S. Dist. LEXIS 34029 (D.N.J. Mar. 14, 2012).....	30
<i>Donnelly v. Option One Mortg. Corp.</i> , 2013 U.S. Dist. LEXIS 92663 (D.N.J. July 1, 2013).....	22
<i>Drake v. Thor Indus.</i> , 2018 U.S. Dist. LEXIS 202216 (D.N.J. Nov. 28, 2018).....	14, 16
<i>Evancho v. Fisher</i> , 423 F.3d 347 (3d Cir. 2005).....	7
<i>F.D.I.C. v. Bathgate</i> , 27 F.3d 850 (3d Cir. 1994) .....	22, 23
<i>Forcellati v. Hyland's, Inc.</i> , 2015 U.S. Dist. LEXIS 3867 (C.D. Cal. Jan. 12, 2015).....	18

*Frederico v. Home Depot*,  
507 F.3d 188 (3rd Cir. 2007)..... 22, 24

*Gallagher v. Johnson & Johnson Consumer Cos.*,  
169 F. Supp. 3d 598 (D.N.J. 2016).....7

*Gray v. Bayer Corp.*,  
2009 WL 1617930 (D.N.J. June 8, 2009) .....30

*Grayson v. Mayview State Hosp.*,  
293 F.3d 103 (3d Cir. 2002) .....29

*Heleine v. Saxon Mortg. Servs.*,  
2013 U.S. Dist. LEXIS 47466 (D.N.J. Apr. 2, 2013)..... 9, 10, 12

*In re Clorox Consumer Litig.*,  
2013 U.S. Dist. LEXIS 107704 (C.D. Cal. July 31, 2013) .....29

*In re Schering Plough Corp. Intron*,  
678 F.3d 235 (3d Cir. 2012) .....6

*In re Scotts EZ Seed Litig.*,  
2013 U.S. Dist. LEXIS 73808 (S.D.N.Y. May 22, 2013)..... 19, 20

*In re Shop-Vac Mktg. & Sales Practices Litig.*,  
964 F. Supp. 2d 355 (M.D. Pa. 2013) .....21

*In re Toshiba Am. HD DVD Mktg. & Sales practices Litig.*,  
2009 U.S. Dist. LEXIS 82833 (D.N.J. 2009).....24

*Inventory Recovery Corp. v. Gabriel*,  
2012 U.S. Dist. LEXIS 100908 (D.N.J. July 20, 2012) .....26

*Kanter v. Barella*,  
489 F.3d 170 (3d Cir. 2007) .....7

*Kelley v. Microsoft Corp.*,  
2007 U.S. Dist. LEXIS 66721 (W.D. Wash. Sept. 10, 2007) .....20

*Lieberson v. Johnson & Johnson Consumer Cos.*,  
865 F. Supp. 2d 529 (D.N.J. 2011).....22

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.